

HOUSE BILL 36
By Harwell

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 10, Part 4, relative to the blood testing of certain drivers of motor vehicles.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-10-406, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a)

(1) Any person who drives a motor vehicle in this state is deemed to have given consent to a test for the purpose of determining the alcoholic content of that person's blood, a test for the purpose of determining the drug content of such person's blood, or both such tests. However, no such test or tests may be administered pursuant to this section unless conducted at the direction of a law enforcement officer having reasonable grounds to believe such person was driving while under the influence of alcohol, a drug, any other intoxicant or any combination thereof, as prohibited by § 55-10-401 or was violating the provisions of § 39-13-106, § 39-13-213(a)(2) or § 39-13-218. For the results of such test or tests to be admissible as evidence, it must first be established that all tests administered were administered to the person within two (2) hours following such person's arrest or initial detention.

(2) Any physician, registered nurse, licensed practical nurse, clinical laboratory technician, licensed paramedic, licensed emergency medical technician approved to establish intravenous catheters, or technologist, or certified or nationally registered phlebotomist who, acting at the written request of

a law enforcement officer, withdraws blood from a person for the purpose of conducting either or both such tests, shall not incur any civil or criminal liability as a result of the withdrawing of such blood, except for any damages that may result from the negligence of the person so withdrawing. Neither shall the hospital nor other employer of the previously listed health care professionals incur, except for negligence, any civil or criminal liability as a result of the act of withdrawing blood from any person.

(3) Any law enforcement officer who requests that the driver of a motor vehicle submit to either or both tests authorized pursuant to this section for the purpose of determining the alcohol or drug content, or both, of the driver's blood shall, prior to conducting either test, advise the driver that refusal to submit to the test will result in the suspension of the driver's operator's license by the court and, if such driver is driving on a license that is cancelled, suspended or revoked because of a conviction for vehicular assault under § 39-13-106, vehicular homicide under § 39-13-213, aggravated vehicular homicide under § 39-13-218, or driving under the influence of an intoxicant under § 55-10-401, that the refusal to submit to such test will, in addition, result in a fine and mandatory jail or workhouse sentence. The court having jurisdiction of the offense for which such driver was placed under arrest shall not have the authority to suspend the license of a driver who refused to submit to either or both tests if the driver was not advised of the consequences of such refusal.

(4) If such person having been placed under arrest and thereafter having been requested by a law enforcement officer to submit to either or both such tests and advised of the consequences for refusing to do so, refuses to submit, the test to which the person refused shall not be given, and such person shall be charged with violating this subsection. The determination as to whether a driver violated the provisions of this subsection shall be made at the same time and by

the same court as the one disposing of the offense for which such driver was placed under arrest. If the court finds that the driver violated the provisions of this subsection, except as otherwise provided in this subdivision, the driver shall not be considered as having committed a criminal offense; however, the court shall revoke the license of such driver for a period of:

(A) One (1) year, if the person does not have a prior conviction for a violation of § 55-10-401, § 39-13-213(a)(2), § 39-13-218, § 39-13-106, or § 55-10-418 in this state or a similar offense in any other jurisdiction.

(B) Two (2) years, if the person does have a prior conviction for an offense set out in subdivision (A).

(C) Two (2) years, if the court finds that the driver of a motor vehicle involved in an accident in which one (1) or more persons suffered serious bodily injury violated this subsection by refusing to submit to such a test.

(D) Five (5) years, if the court finds that the driver of a motor vehicle involved in an accident in which one (1) or more persons are killed violated this subsection by refusing to submit to such a test.

For the purposes of this subdivision, "prior conviction" means a conviction for one (1) of the designated offenses, the commission of which occurred prior to the DUI arrest giving rise to the instant implied consent violation.

(5) In addition to the consequences set forth in this section, if the court or jury finds that the driver violated the provisions of this subsection while driving on a license that was revoked, suspended or cancelled license because of a conviction for vehicular assault under § 39-13-106, vehicular homicide under § 39-13-213, aggravated vehicular homicide under § 39-13-218 or driving under the influence of an intoxicant under § 55-10-401, such driver commits a Class A misdemeanor and shall be fined not more than one thousand dollars (\$1,000)

and shall be sentenced to a minimum mandatory jail or workhouse sentence of five (5) days which shall be served consecutively, day for day, and which sentence cannot be suspended.

(6) Any person who violates the provisions of this section by refusing to submit to either test or both such tests pursuant to subdivision (4) shall be charged by a separate warrant or citation that does not include any charge of violating § 55-10-401 that may arise from the same occurrence.

SECTION 2. Tennessee Code Annotated, Section 55-10-406, is further amended by deleting the word “test” wherever it appears in such section and substituting instead the language “test or tests.”

SECTION 3. Tennessee Code Annotated, Section 55-10-407, is amended by deleting from subsection (a) the language “any test made of” and substituting instead the language “any test or tests conducted on”.

SECTION 4. Tennessee Code Annotated, Section 55-10-407, is further amended by deleting from subsection (b) the language “of a test” and substituting instead the language “of a test or tests”.

SECTION 5. Tennessee Code Annotated, Section 55-10-410, is further amended by deleting from the first sentence of subsection (a) the language “The procurement of a sample of a person's blood for making a test as provided by §§ 55-10-405 - 55-10-412, to be considered valid under §§ 55-10-405 - 55-10-412” and substituting instead the language “The procurement of a sample of a person's blood for the purpose of conducting a test to determine the alcohol content, drug content, or both, of such blood as provided by §§ 55-10-405 - 55-10-412, to be considered valid under §§ 55-10-405 - 55-10-412”.

SECTION 6. Tennessee Code Annotated, Section 55-10-410, is further amended by deleting the first sentence of subsection (b) and substituting instead the following:

Upon receipt of a specimen forwarded to the director's office for analysis, the toxicology request for examination form indicating whether or not a breath alcohol test

has been administered and the results of any such test, the director of the Tennessee bureau of investigation shall have it examined for alcohol concentration, the presence of narcotic or other drugs, or for both alcohol or drugs, if requested by the arresting officer, county medical examiner, or any district attorney general.

SECTION 7. Tennessee Code Annotated, Title 55, Chapter 10, Part 4, is amended by adding the following as a new section:

Section 55-10-454.

(a) In addition to all other fines, fees, costs and punishments now prescribed by law, including the fee imposed pursuant to § 55-10-404(h), a blood alcohol concentration (BAT) test fee in the amount of one hundred dollars (\$100.00) shall be assessed upon conviction for a violation of § 55-10-401, § 39-13-106, § 39-13-213(a)(2) or § 39-13-218, for each offender who has taken a breath-alcohol test on an evidential breath testing unit provided, maintained and administered by a law enforcement agency or where breath, blood or urine has been analyzed by a publicly funded forensic laboratory.

(b) This fee shall be collected by the clerks of the various courts of the counties and forwarded to the state treasurer on a monthly basis for deposit in the "TBI toxicology unit intoxicant testing fund" created as provided in subsection (c) and designated for exclusive use by the Tennessee bureau of investigation for the purposes set out in subsection (c).

(c) There is created a fund within the treasury of the state of Tennessee to be known as the "TBI toxicology unit intoxicant testing fund".

(1) Moneys shall be deposited to the fund pursuant to subsection (b) of this section, and as may be otherwise provided by law, and shall be invested pursuant to § 9-4-603. Moneys in the fund shall not revert to the general fund of the state, but shall remain available for appropriation to the Tennessee bureau of investigation as determined by the general assembly.

(2) Monies in the TBI toxicology unit intoxicant testing fund and available

federal funds, to the extent permitted by federal law and regulation, shall be used to fund a forensic scientist position in each of the three (3) bureau crime laboratories, employ forensic scientists to fill such positions and to purchase, maintain and upgrade the equipment and supplies necessary to examine and analyze in a timely manner the increased number of requests for determinations of alcohol concentration, the presence of narcotic or other drugs, or for both alcohol or drugs in submitted blood samples resulting from permitting the testing for both alcohol and drugs of drivers of motor vehicles suspected to be operating in violation of § 55-10-401. To the extent that additional funds are available, such fund shall be used to employ or purchase such other personnel and equipment as may further allow the bureau to analyze and return the results of testing done on submitted blood samples in a more efficient and expeditious manner.

SECTION 8. For purposes of collecting the additional blood alcohol concentration (BAT) test fee imposed in SECTION 7 and establishing the "TBI toxicology unit intoxicant testing fund" created in SECTION 7 this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, including the disbursement of monies from the fund, this act shall take effect July 1, 2005, the public welfare requiring it.